IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH

JUDGMENT

Satya Narayan & Another Vs. State of Rajasthan
(D.B. Criminal Appeal No.832/2001)

D. B. Criminal Appeal under Sec.374 (2) Cr.P.C. against the judgment dated 20-9-2001 in Sessions Case No.38/2001 passed by Shri Bhagwan Das, RHJS, Additional Sessions Judge (Fast Track) No.2 Kota.

Date of Judgment: April 24, 2007.

PRESENT

HON'BLE MR. JUSTICE SHIV KUMAR SHARMA
HON'BLE MR. JUSTICE GUMAN SINGH

Mr. Prithviraj Singh Rajawat, for the appellants.

Mr. M.L.Goyal, Public Prosecutor for the State.

BY THE COURT: (PER HON'BLE Shiv Kumar Sharma,J.)

Satya Narain and Jagdish, the appellants herein, have impugned the judgment dated September 20, 2001 of the learned Additional Sessions Judge (Fast Track) No.2 Kota whereby the appellants were convicted and sentenced as under:-

Satya Narayan & Jagdish:
U/s.302/34 IPC:
Each to suffer imprisonment for life and fine of Rs.500/-, in default to further suffer rigorous imprisonment for six months.

U/s.323 IPC:
Each to suffer simple imprisonment for three months.

The substantive sentences were ordered to run concurrently.

2. It is the prosecution case that informant Mahadev reached to

the Police Station Khatoli along with Om Prakash and injured Laxmi Chand in the intervening night of April 14 and 15, 2000 around 1.30 AM and submitted a written report (Ex.P.1) to the effect that on April 14, 2000 around 7 PM Satya Narayan and Jagdish (appellants) under the influence of liquor hurled abuses and quarreling with Hajari Lal and Ram Prasad. When informant Mahadev and Laxmichand in tervened Satya Narayan inflicted Dharia blow on the head of Laxmi Chand and other blow with Kutia was caused by Jagdish. Mahadev was also beaten up by Jagdish. On that report case under section 307/34 IPC was registered and investigation commenced. Injured Laxmi Chand was taken to the Hospital where he died and section 302 IPC was added. After usual investigation charge sheet was filed. In due course the case came up for trial before the learned Additional Sessions Judge (Fast Track) No.2 Kota. Charges under sections 323 and 302/34 IPC were framed against the accused, who denied the charges and claimed trial. The prosecution in support of its case examined as may as 13 witnesses. In the explanation under Sec.313 Cr.P.C., the appellants claimed innocence. No witness in defence was however examined. Learned trial Judge on hearing final submissions convicted and sentenced the appellants as indicated herein above.

3. We have heard the submissions of learned counsel for the appellants and learned Public Prosecutor and with their assistance scanned the material on record.

4. It appears from the record that death of Laxmi Chand was homicidal in nature. Vide Post Mortem Report (Ex.P-12) following ante mortem injuries were found on the dead body:-

1. Incised wound 2½ x ¼ x bone deep on left upper nostril margin.
2. Incised wound 4” x ½ x bone deep on mid parietal region.

In the opinion of Dr.Prem Chand Khandelwal (Pw.8) the cause of death was coma because of injury to brain.

5. Coming to the prosecution evidence we notice that the appellant had no enmity with the deceased and incident occurred all of a sudden when the deceased intervened. At the time of incident the appellants were under the influence of liquor. Informant Mahadev (PW.2) in his cross examination deposed thus -

"हमारा मुलजिमान से कोई रंजिश कोई झगडा नहीं था।"

It also appears from the statement of Mahadev that in his statement under section 161 Cr.P.C. (Ex.D.1) he stated that when the informant and Laxmi Chand intervened and made attempt to subside the quarrel that was continued between the appellants and Hazari Lal and Ram Prasad, the appellants inflicted blows on the person of Laxmichand but at the trial an improvement was made and it was stated that after the appellants became quite and quarrel came to an end and Laxmi Chand came back to his house, the appellants made assault at Laxmichand.

6. Hemlal (PW.3) in his deposition stated that when he reached to the place of occurrence he saw Jagdish . Satya Narain, Mahadev and Laxmichand scuffling each other. Relevant portion of his cross examination is as under -

"जब मैं पहुंचा तब मुलजिमान व फरियादी दोनों गुत्थमगुत्था हो

रहे थे। जगदीश, सत्यनारायण, लक्ष्मीचन्द और महादेव चारों गुत्थमगुत्था हो रहे थे .... उस वक्त इनके पास लकडिया नहीं थी.... मैंने जगदीश को पकड लिया था.... उसने मुझसे छूटकर गाडी का 3 फीट का कूंटिया उठाकर लक्ष्मीचन्द के सिर में मार दिया। दूसरी चोट बायी कनपटी पर मारी थी। सारी चोटें लगातार एक साथ ही मार दी थी.... सत्यनारायण ने हमारे सामने कोई चोटें नहीं मारी ...."

7. Fact situation that emerges from the material on record may be summarized as under -

(i) Appellants and deceased were neighbours and had no previous enmity.

(ii) At the time of incident appellants were under the influence of liquor.

(iii) While appellants on one hand and Hajari lal and Ram Prasad on other other hand were hurling abuses and quarreling, Laxmichand and Mahadev intervened and scuffled with the appellants.

(iv) Appellants did not have any weapon in their hands.

(v) While appellants and Laxmichand and Mahadev had scuffled each other, Hem Lal came and caught hold of appellant Jagdish.

(vi) At this juncture Jagdish lifted Kuntia of bullockcart which was lying there and inflicted two blows on the person of Laxmichand.

(vii) According to HemLal (PW.3) Satya Narain did not cause

injury to Laxmichand.

8. Since appellants had no previous enmity with the deceased and the incident occurred all of a sudden and without premeditation and appellant Jagdish in the heat of passion lifted Kuntia and inflicted blows on the person of Laxmichand, it may be inferred that although he had no intention to kill, he had knowledge that the blows inflicted by him were likely to cause death of Laxmichand. Looking to the fact that informant Mahadev attributed one injury to appellant Jagdish and another to appellant Satya Narain. We hold both the appellants guilty under section 304 Part II read with section 34 IPC. Charge under section 323 IPC is however not found proved against them.

9. For these reasons, we partly allow the appeal and instead of section 302 read with 34 we convict appellants Satya Narayan and Jagdish under section 304 Part II read with 34 IPC. Looking to the fact that both the appellants have already suffered confinement for a period of more than five years and six months, the ends of justice would be met in sentencing them to the period already undergone by them in confinement. The appellants Satya Narayan and Jagdish, who are in jail, shall be set at liberty forthwith, if they are not required to be detained in any other case.

The impugned judgment of learned trial court stands modified as indicated above.

(Guman Singh),J. (Shiv Kumar Sharma)J.

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